

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2923 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BACHUBHAI JIVRAJBHAI PATEL DECD.THRO'HEIRS MANUBEN & 5

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/98

ORAL JUDGEMENT

Rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioners have prayed for a declaration that the petitioners' land bearing Revenue

Survey No. 421 Paiki situated near Hapa, Jamnagar, could not be included within the Urban Agglomeration of city of Jamnagar having regard to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act) and for consequential reliefs on that basis.

3. In response to the notice issued by this Court, Mr.Sompura, learned AGP appears and submits that the question whether a particular parcel of land is within or outside the limits of an Urban Agglomeration as mentioned in Schedule I to the Act, would be a question of fact and that since the respondents are not admitting the averments made by the petitioner that the land in question is outside the limits of Jamnagar urban agglomeration, the matter is eminently fit for decision of the competent authority who is the fact finding authority and who is seized of the matter pursuant to the order of remand passed by the State Government.

4. The learned Counsel for the petitioner is not in a position to dispute the above legal submission but without prejudice to his contention that the entire land is outside the limits of the Jamnagar Urban Agglomeration contends that if any portion of the land in question is within the urban agglomeration and the remaining part of the land is found outside the urban agglomeration, the Competent authority must act on the basis of the principle laid down by this Court in Special Civil Application No.2821 of 1996 as confirmed in L.P.A.No. 365 of 1997. This submission is made by the learned Counsel for the petitioners on an apprehension that when the authorities find a part of the land within the urban agglomeration and the other part outside the urban agglomeration, they apply the provisions of the Act to the entire holding. There is no justification for entertaining such an apprehension. If a part of the land in question is within the limits of urban agglomeration and other part is outside the limits of an urban agglomeration, obviously the provisions of the Act would be applicable only to that portion of the land which is within the urban agglomeration/s and the portion of the land outside the limits of an urban agglomeration obviously would not be covered by the provisions of the Act.

5. Subject to the aforesaid observations the petition is disposed of with a direction that the Competent Authority shall consider the averments and submissions made and also the material which may be produced by or on behalf of any public authority or

agency and by or on behalf of the petitioners and decide the matter in accordance with law within three months from the date of receipt of a copy of this Order.

6. It is clarified that this Court has not expressed any opinion on the aspect whether the land in question or any particular portion thereof is within or outside the limits of the Jamnagar Urban Uggglomeration.

7. This petition is accordingly disposed of. Rule is made absolute to the aforesaid extent only, with no order as to costs.

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